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November 28, 2011

Via ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW - Room TWB204
Washington, D.C. 20554

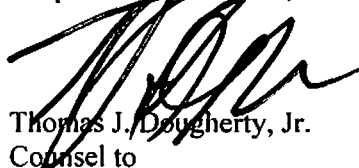
**Re: Comments on Notice of Proposed Rulemaking
In MB Dkt. No. 11-169; PP Dkt. No. 00-67**

Dear Ms. Dortch:

Transmitted with this letter in accordance with Rule 1.419(d), on behalf of Inter Mountain Cable, Inc. and Mikrotec CATV, LLC are its above-referenced comments.

Should there be any questions regarding this submission, kindly communicate directly with the undersigned.

Respectfully submitted,



Thomas J. Dougherty, Jr.
Counsel to
Inter Mountain Cable, Inc.
Mikrotec CATV, LLC

Attachment

Cc: Mr. Steven Broeckaert (with attachment, via email)
Mr. Brendan Murray (with attachment, via email)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Basic Service Tier Encryption)	MB Docket No. 11-169
)	
Compatibility Between Cable Systems and)	PP Docket No. 00-67
Consumer Electronics Equipment)	

**COMMENTS OF INTER MOUNTAIN CABLE INC. AND
MIKROTEC CATV, LLC ON
NOTICE OF PROPOSED RULEMAKING**

Inter Mountain Cable Inc. (“IMC”) and Mikrotec CATV, LLC (“MT”), by their counsel, hereby submit their comments on the Notice of Proposed Rulemaking (the “NPRM”) in the above-captioned dockets (rel. Oct. 14, 2011); 76 Fed. Reg. 66666 (Oct. 27, 2011).¹

**I. IMC’s and MT’s Petitions to Waive the Anti-encryption
Rule Should Be Granted Immediately**

As the Commission is aware, IMC and MT both submitted petitions for special relief seeking waivers of the existing prohibition of encrypting the basic tier of service.² These petitions were prepared at significant expense in dollars and employee time, and present compelling cases for waiving the anti-encryption rule to allow IMC and MT to scramble their basic services when those basic services are converted to all-digital modulation. As a result, runaway signal theft will be largely eliminated, while the costs of offering services will be significantly reduced, as will subscriber inconvenience, by the consequent elimination of truck roles required to change and disconnect services. In addition, no longer will IMC or MT be

¹ IMC and MT are separate cable operators who operate in some adjacent areas. MT receives headend service from IMC under arms-length agreement. They are separately controlled companies.

² NPRM, ¶6, n.23; ¶7, n.38.

required to conduct expensive signal audits and to control theft by the dangerous and time-consuming act of physically removing the aerial subscriber access drop between the utility pole and the eaves of the house. Those petitions truly present a “win-win” for the cable operators and consumers, who will receive free converter boxes as explained in the petitions.

Further, these petitions are not controversial. There is nothing in the NPRM to even remotely suggest that the Commission is considering making any changes to the anti-encryption rule that would render IMC’s petition or MT’s petition against the public interest. Those petitions are completely consistent with the NPRM’s proposals and possible outcomes, as well as with the mandatory requirement under Section 624A that the Commission grant basic tier encryption authorization in circumstances like ours in which “the use of such technology does not interfere with the functions of subscribers’ television receivers or video cassette recorders.”³

IMC’s petition has been pending since last April. While MT’s petition was filed later, it, like IMC’s petition, has gone through every procedural process required by Rule 76.630. There are compelling reasons to grant those petitions now, rather than to wait for the publication and effectiveness of a change in Rule 76.630, which might take anywhere from an additional 6 months to a year. In our opinion, it would take nothing more than a summary order stating that the petitions have been reviewed, that they make cases of sufficient persuasiveness compared to existing precedent to warrant their grant, and to grant them, in each case subject to the outcome of the rule making initiated by the NPRM. Such an order would be simple to craft and would be beyond assault, as the action would be protected by the condition that the order is subject to the outcome of the rule making.

³ NPRM, at ¶ 10.

II. IMC and MT Suggest Some Technical Changes in the Wording of the Proposed Rule Change to Avoid Unintended Interpretations

In reviewing the NPRM, we developed a few concerns with the language of the proposed change to rule 76.630(a). Two of these concerns arise from the NPRM's proposal to limit the encryption right to "all-digital systems." First, there is the concern over whether the Commission should prohibit the encryption of the basic service tier when there is some analog video on the cable system.⁴ As the NPRM recognizes, some information in an otherwise "all-digital" system may be transmitted in analog.⁵ What is important, is that all of the *programming* on the basic tier be transmitted in a digital modulation; to be specific, the TV station programming, the PEG channel programming and any cable network programming (e.g., CNN, TNT) that the cable operator offers on the basic tier of service. If that condition is met, then there should be no concern that the system otherwise uses analog modulation. The change to clause (i) of subsection (a)(1) of the proposed rule shown on the Attachment to these comments would resolve that potential concern.

Second, we are concerned that the concept of restricting encryption rights to "all-digital systems" would require that an *entire* cable system convert to all-digital before *portions* of it that have made the conversion may encrypt the basic tier of service. Cable systems may be as small as a city block and as large as almost an entire DMA. Many of the "cable systems" identified on the Commission's list of cable communities with a single system identification number (PSID) cover tens or hundreds of separate community units (CUIDs). We see the proper focus as not what the cable system does for all, but what it does for the particular subscriber in question. Stated otherwise, what is relevant is whether or not the subscriber receives an all-digital basic

⁴ NPRM, at ¶9.

⁵ *Id.*

tier service from the cable system. If so, then there is no need to prohibit the encryption of the basic tier programming provided to this subscriber while the rest of, or any part of, the “cable system” awaits conversion to all-digital video programming modulation. And there are important reasons not to postpone the benefits of encryption of any particular subscriber’s cable service while we wait for the entire cable system to convert to “all-digital” video service. At least in the case of IMC and MT (if not all cable companies), converting a home to all-encrypted service at the same time that the home is converted to all-digital service saves the cable system significant expense, and, by combining the two changes, avoids having the subscriber pay attention to and adapt to two system changes at two different times, thereby reducing subscriber inconvenience and confusion. IMC and MT will convert their separate analog/digital platforms to all-digital service on a node-by-node basis that does not correspond to community units or their respective cable systems. IMC and MT want the ability to convert any subscriber to fully-encrypted service at the time the subscriber is converted to all-digital video service. We suggest that the Commission express this right in the revised Rule 76.630(a) by making the changes to subsection (a), subsection (a)(1) and clause (i) of subsection (a)(1) of the proposed rule shown on the Attachment to these comments.

Our third concern is that the proposed rule might be read so that the three free subscriber equipment requirements set forth in proposed clauses (ii) – (iv) of subsection (a)(1) are seen as cumulative rather than mutually-exclusive, or might be read in a manner that causes them in effect to exceed the intent of the requirements as expressed in the NPRM. In the Attachment to these comments, we have made proposed changes to those subsections which we believe will make them consistent with that intent. In providing these changes, it should be understood that we are not endorsing the concept of free or subsidized equipment. IMC and MT each believe

that the offer of free equipment it has made in its petition for special relief is generous and that the Commission should strive to avoid requiring one type of competitor to incur unnecessary regulatory costs (in this case, cable operators) when another type of direct competitor can provide a service without these regulatory costs (in this case, direct-to-the-home satellite systems). IMC, MT and other cable operators who incur the considerable capital costs in converting analog tiers to digital tiers will reward their subscribers with noticeably improved signal quality, offers of many more video choices, and, at least for system subject to effective competition, the prospect of lower rates made possible by reduced operating costs.

The NPRM explains that the purpose of the three free subscriber equipment options is “to prevent consumers from having to purchase or lease new equipment immediately in order to continue accessing the basic service tier if their cable operators choose to encrypt this tier.”⁶ Stated otherwise, the Commission proposes to require free equipment options for those subscribers who will be forced to use a set-top box or CableCARD when they do not presently use such a device or could not be required to use such a device absent a waiver of Rule 76.630 as presently in effect.

With that understanding, we fear that clause (ii) may be interpreted to extend beyond those who take basic-only service by its focus on “basic service tier subscribers....” As the Commission knows, a “basic service tier subscriber” may also subscribe to one or more advanced tiers or services that require a set-top box or CableCARD regardless of whether the basic tier is encrypted or not encrypted. That such advanced tier and service subscribers might be swept into the reach of clause (ii) is made more likely by the fact that clause (iv) of the proposed rule refers to “basic-only subscribers....” While the two terms may appear to be the

⁶ NPRM, at ¶ 11.

same, they are not necessarily the same. A “basic-only subscriber” is not a subscriber to any other tier of service, while a “basic tier subscriber” may also be a subscriber to other tiers that may require a set-top box or CableCARD for reception and which may be encrypted without Commission consent upon Rule 76.630 as it exists today. Subscribers to services beyond the basic tier are not within the zone of subscribers the Commission seeks to protect and have no reasonable expectation of unencrypted services outside of the basic service tier. Accordingly, we believe that clause (ii) should be limited to “basic-only subscribers” and we have suggested a language change for this purpose in the Attachment.

For the same reason, clause (iv) should be limited to basic-only subscribers who do not use a set-top box at the time of conversion and we have suggested a language change for this purpose in the Attachment.

In no event should a subscriber be eligible for a free set-top box or CableCARD if the subscriber adds a tier of service that the cable operator could scramble without Commission consent under the current version of Rule 76.630(a) and, to express this concept, we have proposed in Attachment A at new clause (v).

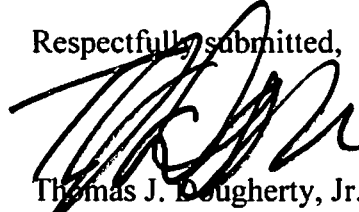
Finally, to clarify when the cable operator must make the “offer” of free equipment, we suggest the addition of a new clause (vi) shown in Attachment A which implement the “immediately” concept expressed in the NPRM.⁷

⁷ Paragraph 11 of the NPRM states the purpose of the three free services options as: “to prevent consumers from having to purchase or lease new equipment *immediately* in order to continue accessing the basic service tier...” (emphasis supplied)

III. Conclusion

IMC and MT urge the Commission to immediately grant their petitions for special relief and to otherwise consider the foregoing comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tom Dougherty', is written over the text 'Respectfully submitted,'.

Thomas J. Dougherty, Jr.
Their Counsel

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November 28, 2011

ATTACHMENT

§76.630 Compatibility with consumer electronic equipment.

(a) Cable system operators shall not scramble or otherwise encrypt signals ~~carried~~delivered to a subscriber on the basic service tier.

(1) This prohibition shall not apply to the basic service tier signals delivered to a subscriber in systems in which when:

(i) No television ~~programming is~~signals are provided to the subscriber using the NTSC system; and

(ii) The cable operator offers to its existing basic-~~only service tier~~ subscribers ~~-(who do not use a set-top box or CableCARD at the time of encryption), and who are not~~ Medicare recipients, the equipment necessary to descramble or decrypt the basic service tier signals (the subscriber's choice of a set-top box or CableCARD) on up to two separate television sets without charge for two years from the date of encryption; and

(iii) The cable operator offers to its existing digital subscribers who have an additional television set currently receiving basic-only service without a set-top box or CableCARD, the equipment necessary to descramble or decrypt the basic service tier signals on that one television set receiving basic-only service without charge for one year from the date of encryption; and

(iv) The cable operator offers to all existing basic-only subscribers who do not use a set-top box or CableCARD at the time of encryption, and who receive Medicaid, the equipment necessary to descramble or decrypt the basic service tier signals on up to two separate television sets without charge for five years from the date of encryption.

(v) Notwithstanding anything to the contrary in clauses (ii) – (iv), no such offer need be made, nor must a cable operator allow the acceptance of an offer from, or the continued

provision of free equipment to, any subscriber that elects to take a video service in addition to basic-only service or who expands the services received by a television set beyond basic-only service.

(vi) Cable operators must make the offers referred to in clauses (ii) – (iv) prior to or at the time of encrypting the basic service tier received by a subscriber. Cable operators have no obligation to continue any such offer to a subscriber or to make a new offer to a subscriber beyond the date of the commencement of encryption of the basic service tier programming provided to that subscriber.